

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PATRICK EDDINGTON,
1000 Massachusetts Avenue
Washington, DC 20001

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION,**
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

**NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,**
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001

Defendants.

Case No. 19-cv-1691

COMPLAINT

1. Plaintiff, PATRICK EDDINGTON files this Freedom of Information Act suit to force Defendants FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, and NATIONAL ARCHIVES AND RECORDS ADMINISTRATION to produce records related to any FBI records on Richard Masayuki Kotoshirodo, a now-deceased Japanese American who assisted the Imperial Japanese Navy in its undercover espionage operations during the months immediately before the attack on Pearl Harbor.

PARTIES

2. Plaintiff EDDINGTON is a Research Fellow and scholar at the Cato Institute and made the FOIA requests at issue in this case as part of research for a book on the history of federal government domestic surveillance activities.

3. Defendant FEDERAL BUREAU OF INVESTIGATION is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552, and a component of the DEPARTMENT OF JUSTICE.

4. Defendant DEPARTMENT OF JUSTICE is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

5. Defendant NATIONAL ARCHIVES AND RECORDS ADMINISTRATION is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

6. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

7. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because a plaintiff may always bring a federal FOIA suit in the U.S. District Court for the District of Columbia.

FBI's FOIA VIOLATION

8. On February 16, 2019, EDDINGTON requested “access to and electronic copies of any FBI records from January 1, 1936 to the date of this request on the following deceased Japanese American: Richard Masayuki Kotoshirodo.” A true and correct copy of the request is attached as Exhibit A.

9. On February 25, 2019, the FBI acknowledged receipt of the request and assigned FOIPA Request Number 1429271-000 to the matter. A true and correct copy of the acknowledgement is attached as Exhibit B.

10. The February 25, 2019 correspondence from the FBI also informed EDDINGTON that it had “completed its search for responsive documents” and found that “records potentially responsive have been sent to NARA.” EDDINGTON’s request was “administratively closed.” See Exhibit B.

11. The FBI’s search for responsive records was limited to the Central Records System main files, and did not include cross-reference searches, or searches of the ELSUR (electronic surveillance) database or the Honolulu field office.

12. On April 9, 2019, EDDINGTON submitted an appeal to the U.S. Department of Justice challenging the adequacy of the FBI’s search. A true and correct copy of the appeal is attached as Exhibit C.

13. On April 11, 2019, DOJ declined to grant expedited treatment of the appeal, which DOJ assigned tracking number DOJ-AP-2019-003748. A true and correct copy of the correspondence is attached as Exhibit D.

14. In violation of the statutory deadline for non-expedited appeals, DOJ has failed to issue a determination on the appeal.

NARA’s FOIA VIOLATION

15. On March 2, 2019, EDDINGTON requested from NARA the two specific FBI files referenced in FBI’s response to his request to FBI (100-HN-185, RG 65, Entry P 138, Classification 100, Honolulu Box 4, 490/74/02/00 and 65-HQ-41886, RG 65, Entry UD04D 2, Classification 65, Headquarters Box 1003, 631/33/16/05). A true and correct copy of the request is attached as Exhibit E.

16. On March 8, 2019, NARA acknowledged receipt of EDDINGTON’s FOIA request on March 4, 2019 and assigned FOIA case number 60615 to the request. NARA further advised that he could have immediate and unrestricted access to file 65-HQ-41886, but that

access to file 100-HN-185 would be delayed for additional screening. NARA denied EDDINGTON's request for expedited processing and advised that the expected processing time was approximately 24 months. A true and correct copy of the request is attached as Exhibit F.

17. On April 9, 2019, EDDINGTON requested a "reexamination of the denial of the expedited processing decision for Request 60615" and provided additional support for his request for expedited processing request. A true and correct copy of the correspondence is attached as Exhibit G.

18. On April 15, 2019, NARA denied EDDINGTON's request for expedited processing. A true and correct copy of the second denial is attached as Exhibit H.

19. As of the date of this filing, in violation of the deadlines for non-expedited requests, NARA has neither issued a determination nor "promptly" produced file 100-HN-185.

COUNT I –FBI VIOLATION OF FOIA

20. The above paragraphs are incorporated herein.

21. Plaintiff made a proper FOIA request to Defendant.

22. Defendant FBI is an agency subject to FOIA.

23. Defendant has not promptly produced all non-exempt records responsive to the request resulting from an adequate search.

COUNT II –NARA VIOLATION OF FOIA

24. The above paragraphs are incorporated herein.

25. Plaintiff made a proper FOIA request to Defendant.

26. Defendant NARA is an agency subject to FOIA.

27. Defendant has not promptly produced all non-exempt records responsive to the request resulting from an adequate search.

WHEREFORE, Plaintiff asks the Court to:

- i. Order Defendants to conduct a reasonable search for records and to produce all non-exempt requested records;
- ii. Award Plaintiff's attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

Dated: June 10, 2019

Respectfully Submitted,

/s/ Joshua Hart Burday

Attorneys for Plaintiffs

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